

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 7, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-29901-D-13	JUANITO/VIRGIE PERALTA	MOTION TO VALUE COLLATERAL OF
	CSL-1		EMC MORTGAGE CORPORATION
			9-5-13 [16]

Final ruling:

This is the debtors' motion to value collateral of EMC Mortgage Corporation, subsidiary of MTH Mortgage/Chase Home Mortgage ("EMC"), DC No. CSL-1. The motion will be removed from calendar because it has already been denied by the court.

The motion was filed September 5, 2013 and set for hearing on October 29, 2013. The motion was denied by final ruling because of service defects and also because the proof of claim filed in this case indicates that the actual holder of the claim is JPMorgan Chase Bank, N.A. (the "Bank"). On October 31, 2013, the debtors filed a motion to value collateral of the Bank, as successor by merger to EMC Mortgage, LLC, DC No. CSL-2. The notice of hearing purported to set the matter for hearing on December 11, 2013. However, because that was not an available date on the court's self-set calendar for hearings in chapter 13 cases in the Sacramento Division in this department, such as this case, the Clerk's office notified the debtors' counsel that the matter would be calendared for hearing only upon receipt of an amended

notice of hearing with a correct date filled in. The clerk's office notified the debtors' counsel that December 10, 2013 and January 7, 2014 were available dates.

However, rather than filing an amended notice of hearing on the motion to value collateral of the Bank, DC No. CSL-2, the debtors' counsel filed and served an amended notice of hearing on the motion to value collateral of EMC, DC No. CSL-1, purporting to set that matter for hearing on January 7, 2014. The amended notice of hearing refers to the target of the motion three times as EMC; it does not refer to the Bank at all, and it contains the docket control number CSL-1, not CSL-2. As the debtors' motion to value collateral of EMC, DC No. CSL-1, has already been denied, it will be removed from this calendar. (The debtors' counsel has taken no action with regard to DC No. CSL-2; thus, the court will not consider it at this time.)

The matter will be removed from calendar. No appearance is necessary.

2. 13-33403-D-13 MARGARITA RAMIREZ MOTION TO VALUE COLLATERAL OF
LT-1 JP MORGAN CHASE BANK, N.A.
11-25-13 [17]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3. 13-33403-D-13 MARGARITA RAMIREZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
12-9-13 [25]

Final ruling:

This is the trustee's objection to confirmation of the debtor's chapter 13 plan. On December 17, 2013, the debtor filed an amended plan; as a result, the trustee's objection to the original plan is moot. The debtor's counsel should note that the court will take no action on the proposed amended plan until a proper motion to confirm it is filed, served, and set for hearing. See LBR 3015-1(d) (1).

The objection will be overruled as moot by minute order. No appearance is necessary.

4. 11-32704-D-13 EUGENE/ANNA LUISA FELISCO MOTION TO MODIFY PLAN
JCK-4 11-26-13 [56]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5. 11-49808-D-13 CESAR/BETTY DEL ROSARIO MOTION TO MODIFY PLAN
JCK-7 11-26-13 [119]
6. 11-30810-D-13 NICHOLAS/CRYSTAL STRAND MOTION TO SELL
CLH-2 12-5-13 [32]
7. 13-31810-D-13 OTHA DREAD MOTION TO CONFIRM PLAN
JCK-1 11-20-13 [32]
8. 11-40912-D-13 ARNEL/KATRINA DE JESUS MOTION TO SELL
DMR-1 12-9-13 [133]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in Debtors' Motion to Short Sell Real Property is supported by the record. As such the court will grant the Debtors' Motion to Short Sell Real Property and approve the sale under Bankruptcy Code § 363(b). Moving party is to submit an appropriate order to be signed off as to form by the Chapter 13 trustee. No appearance is necessary.

9. 11-24613-D-13 GUILLERMO/CECILIA YADAO
MOT-2

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
10-14-13 [51]

10. 13-31814-D-13 KEVIN KENNEDY
13-2314
KENNEDY V. GREER ET AL

CONTINUED MOTION TO DISMISS
ADVERSARY PROCEEDING
11-1-13 [7]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the motion of defendants AMS Servicing, LLC and The Bank of New York Mellon Trust Company, National Association as Grantor Trustee of the Protium Master Grantor Trust (the "moving parties"), to dismiss this adversary proceeding pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b). The plaintiff has filed opposition to a number of the moving parties' theories, although he does not oppose dismissal. The moving parties have filed a reply, which the court has considered. For the following reasons, the motion will be granted on one of the several grounds asserted, and this adversary proceeding will be dismissed.

The moving parties contend that because the plaintiff's underlying chapter 13 case has been dismissed, this court has ceased to have jurisdiction over the issues raised by the plaintiff's complaint. In light of In re Carraher, 971 F.2d 327 (9th Cir. 1992), the court does not agree. In that case, the court held that a bankruptcy court does not automatically lose jurisdiction over related cases when the underlying bankruptcy case is dismissed. 971 F.2d at 328. Instead, the bankruptcy court is to exercise its discretion in determining whether to dismiss the related case, considering "economy, convenience, fairness and comity." Id.

This adversary proceeding has been pending for not quite three months. So far as the court can tell, no discovery has been conducted, and no motions have been filed except this one. The plaintiff has an action pending in state court in which he asserts virtually the same claims he asserts in this adversary proceeding. This court has determined that the automatic stay has terminated pursuant to § 362(c)(3) of the Bankruptcy Code, and the parties are actively litigating their disputes in state court. In fact, the plaintiff states in his opposition to this motion that he has offered to stipulate to dismissal of the adversary proceeding. There is no reason at all for the same issues to be litigated in this court. For all these reasons, the economy, convenience, and fairness factors weigh in favor of dismissal of the adversary proceeding.

The comity factor also weighs in favor of dismissal. The plaintiff's claims concern an alleged unlawful foreclosure; the issues center exclusively on state law and federal law other than bankruptcy law, which courts other than this one are fully prepared to resolve. Further, once the plaintiff's chapter 13 case was

dismissed, the connection between his claims against the defendants, on the one hand, and the Bankruptcy Code or the bankruptcy court, on the other hand, was tenuous at best. The plaintiff's claims did not arise under the Bankruptcy Code or arise in a case under the Code, and they are related to a case under the Code that has already been dismissed. Clearly the interest of comity favors the issues being resolved by a state court or a federal court other than this bankruptcy court.

For the reasons stated, the court will exercise its discretion not to retain jurisdiction over the plaintiff's complaint, and according, will dismiss the adversary proceeding. The court expresses no opinion on the merits of the action or on any of the issues raised by the motion to dismiss other than the issues of whether this court has or should retain jurisdiction of the adversary proceeding. The plaintiff's adversary complaint names several defendants in addition to those who have brought this motion. There being no basis on which the court should retain jurisdiction over the plaintiff's claims against those other defendants, the court will dismiss the adversary proceeding as to all the defendants.

Finally, the moving parties have requested an award of attorney's fees and costs under 28 U.S.C. § 1927, which states: "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." The court is troubled by the plaintiff's filing of this and five other chapter 13 cases in the past two years, all while litigating his disputes with the moving parties in state court, and all while having no creditors other than the holder of the mortgage that is the subject of this adversary proceeding and the plaintiff's homeowner's association for a small amount of unpaid dues. However, the court addressed the issue of the debtor's repeat filings when it issued an order granting in rem relief from the stay. Further, there was a jurisdictional basis for the adversary proceeding at the time it was commenced, albeit thin, and it appears the state court has rejected, at least in part, the moving parties' argument that the plaintiff's claims are barred by res judicata. Thus, apparently, the plaintiff's claims were not patently baseless when they were brought. For these reasons, the court will not award attorney's fees or costs for the bringing of this motion.

For the reasons stated above, the adversary proceeding will be dismissed by minute order with no further relief being afforded. No appearance is necessary.

11. 10-42117-D-13 MIGUEL/DAISY MEJIA
JDP-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
11-27-13 [38]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

12. 13-34417-D-13 RONALD/CHRISTINA RAMIREZ MOTION TO VALUE COLLATERAL OF
ALB-1 CHASE BANK
11-14-13 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Chase Bank at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Chase Bank's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 13-20719-D-13 VICTOR/DAWN ALEJANDRE MOTION TO CONFIRM PLAN
TBK-2 12-2-13 [49]

14. 13-27621-D-13 CLAUDIA JOB CONTINUED MOTION TO VALUE
MLA-4 COLLATERAL OF TEDROWE REALTY
AND INVESTMENTS
9-12-13 [63]

Tentative ruling:

This is the debtor's motion to value collateral of Tedrowe Realty & Investments ("Tedrowe"); namely, a second position deed of trust against the debtor's residence, at \$0. Tedrowe filed opposition to the motion, and the hearing was continued to allow Tedrowe to submit evidence, which it has done. For the following reasons, the motion will be denied.

There is a deed of trust on the property that is senior to Tedrowe's deed of trust - the senior lien secures a claim in the amount of \$365,990. Thus, if the value of the property is more than \$365,990, the debtor may not value Tedrowe's claim under § 506(a) of the Bankruptcy Code. The debtor's evidence of value consists of the debtor's own declaration and a declaration of and appraisal by real estate appraiser Darrell Sasaki. Both offer their opinions that the value of the property is \$350,000. Tedrowe, on the other hand, has submitted a declaration of real estate broker Lea Tedrowe, with reports of comparable sales she relied on, and a declaration of and appraisal by real estate appraiser Jon "Brant" Feters, who opines that the value of the property is \$485,000.¹

The court will begin by finding that the debtor's testimony should be given little, if any, weight. She states she is familiar with recent sales in the surrounding neighborhood, and "based on [her] information and belief," the value is \$350,000. The statement based on information and belief is hearsay. To the extent the debtor relied in forming her opinion on recent sales in the neighborhood, she was relying on hearsay and facts of a type generally relied on by experts in the field of real estate appraisal, as to which the debtor had not shown she has any qualifications. (The debtor is a transportation coordinator for a company called Constellation.)

Similarly, the court gives little weight to the declaration of broker Lea Tedrowe, whose opinion depends in part on hearsay conversations with other real estate professionals, and whose independent conclusions about the value of the site and the replacement cost of the residence are outweighed, in terms of evidentiary value, by the parties' respective formal appraisals, on account of the appraisers' greater qualifications in the field. The court notes that none of the comparables submitted by Ms. Tedrowe was selected as a comparable by either of the appraisers.

Turning to the competing appraisals, the court notes, first, that Mr. Sasaki has not submitted any evidence as to how long he has been an appraiser, whereas Mr. Fetters has been an appraiser since 1992. All of Mr. Fetters' comparables are within four miles of the debtor's property, whereas two of Mr. Sasaki's comps are more than eight miles distant. Further, two of Mr. Sasaki's comps are quite a bit older than the debtor's residence (32 and 33 years old, as compared with the debtor's home, which is between one and two years old), whereas Mr. Fetters selected three sales and one listing (which he reports in an update has since sold) that are within 15 years of the age of the debtor's residence. It appears only one of those was on the market at the time Mr. Sasaki made his appraisal; that is, there was only one he might have considered. For that one, Mr. Fetters made significant downward adjustments because the comparable has a pool and a solar electric system (adjustments totaling \$40,000 for those two factors); Mr. Sasaki may well have concluded it was not sufficiently comparable to the debtor's property to be selected.

This brings up another significant difference between Mr. Fetters' comparables and Mr. Sasaki's - Mr. Fetters made his appraisal over four months after Mr. Sasaki's appraisal,² and Mr. Fetters' comparables are higher in price, both in themselves and as adjusted, than Mr. Sasaki's, which may reflect a general increase in property values in recent months. The parties have not briefed the issue of the proper date for valuation of real property under § 506(a). Current case law indicates some courts find the petition date to be the applicable date (see, e.g., In re Gutierrez, 2013 Bankr. LEXIS 5035 *14-15 (Bankr. C.D. Cal. Nov. 27, 2013)); others find the confirmation date to be appropriate (see, e.g., In re Dheming, 2013 Bankr. LEXIS 1166 *8-9 (Bankr. N.D. Cal. March 22, 2013)). The debtor, however, controlled the timing of her motion, and delayed almost three months after she received Mr. Sasaki's appraisal before filing the motion. The debtor has not objected to Tedrowe's use of comparables that closed after the petition date. For these reasons, the court will not penalize Tedrowe for its appraiser's selection of comparable sales that closed post-petition, and will not make any adjustments to its conclusion based on that fact.

To conclude, because Mr. Fetters used comparables closer in both location and age to the debtor's property, and because his comparables are more recent, the court gives more weight to his appraisal, and concludes that the value of the property is

in excess of \$430,000.

A few other comments are in order. Tedrowe's counsel claims in her opposition that Mr. Sasaki "deliberately ignored two better comparables" and "deliberately chose properties that were located far away not to obtain a fair market value, but to support the debtor in stripping liens." Opp. at 3:3:16, 3:24-25. Tedrowe submitted summary information about those two comparables under cover of Ms. Tedrowe's declaration, without making any price adjustments to reflect differences from the subject property.³ Further, Tedrowe's appraiser, Mr. Fетters, did not select either of those comparables for his report, although he selected one other that closed about the same time. Both of the comparables cited by Tedrowe's counsel are on much larger lots than the debtor's, and the price per square foot of those two is much higher even than the price Mr. Fетters ultimately assigned to the debtor's residence. In short, the evidence does not support Tedrowe's counsel's conclusion that Mr. Sasaki deliberately ignored those two comparables in order to assist the debtor, and the court finds counsel's aspersions to be unseemly.

Next, citing In re Taffi, 96 F.3d 1190, 1192 (9th Cir. 1996), and In re Case, 115 B.R. 666, 670 (9th Cir. BAP 1990), Tedrowe complains that Mr. Sasaki made a downward adjustment to one of his comparables to account for the seller's concession to pay the buyer's closing costs. However, those cases stand for the proposition that costs of sale are not to be deducted from the value of the debtor's property when the debtor is retaining the property; they do not support Tedrowe's proposition that the adjustment Mr. Sasaki made to the value of a comparable property to bring it more in line with the debtor's was inappropriate. Finally, Tedrowe complains that Mr. Sasaki's remarks about his Comparable No. 4 are speculative and hearsay. Mr. Sasaki himself states in his appraisal he gave the greatest weight to his other three comparables; the court has disregarded his comments about Comparable No. 4 for purposes of this decision.

For the reasons stated, the court concludes there is some value in the property to which Tedrowe's lien attaches, and because the property is the debtor's residence, the claim cannot be modified (11 U.S.C. § 1322(b)). Accordingly, the motion will be denied.

The court will hear the matter.

1 There is one preliminary matter. Tedrowe complains that "Debtor's appraisal has been amended from her original submission, apparently to correct for the prior letter of value setting a value six months after the date of the letter." Further Opp., filed Nov. 27, 2013 ("Opp."), at 2:1-2. The court gives no weight to this observation. It is clear from the actual date of Mr. Sasaki's appraisal, June 15, 2013, that when he sent his appraisal to the debtor, he used an older letter as a template, a letter dated December 12, 2012, and simply forgot to change that date.

2 Mr. Sasaki's appraisal is as of June 15, 2013; Mr. Fетters' is as of October 26, 2013.

3 Tedrowe's counsel has made her own adjustments for acreage, to arrive at her own adjusted values; however, she has not shown she has any qualifications to value real property. For the same reason, the court will disregard her conclusions about the figures Mr. Sasaki used in his cost approach analysis, and regarding his figures for depreciating a well and septic tank and for depreciating the older comparables.

15. 13-27621-D-13 CLAUDIA JOB
MLA-5

CONTINUED MOTION TO VALUE
COLLATERAL OF TEDROWE REALTY
AND INVESTMENTS
9-12-13 [69]

Tentative ruling:

This is the debtor's motion to value collateral of Tedrowe Realty & Investments ("Tedrowe"); namely, a third position deed of trust against the debtor's residence, at \$0. Tedrowe filed opposition to the motion, and the hearing was continued to allow Tedrowe to submit evidence, which it has done. For the following reasons, the motion will be denied.

There are two deeds of trust on the property that are senior to Tedrowe's deed of trust - they secure claims totaling \$427,845. Thus, if the value of the property is more than \$427,845, the debtor may not value Tedrowe's claim under § 506(a) of the Bankruptcy Code. The court has found, on the debtor's motion to value Tedrowe's second deed of trust, DC No. MLA-4, that the value of the property is in excess of \$430,000. The court incorporates herein its ruling on that motion, as though fully set forth herein. On that basis, the court concludes that there is some value in the property to which the Tedrowe's lien attaches, and because the property is the debtor's residence, the claim cannot be modified (11 U.S.C. § 1322(b)). Accordingly, the motion will be denied.

The court will hear the matter.

16. 13-29922-D-13 NORMAN/PANDORA BURTON
PGM-1

CONTINUED MOTION TO CONFIRM
PLAN
10-16-13 [22]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to confirm a chapter 13 plan. The trustee filed opposition to the motion, and the hearing was continued to allow the debtors to file supplemental evidence, which they have done. For the following reasons, the motion will be denied.

This case was filed July 29, 2013. The debtors proposed a plan to pay \$400 per month for 60 months, which would be sufficient to pay only their three car loans, attorney's fees, and trustee compensation, leaving a 0% dividend for unsecured creditors. The trustee objected on the ground that the debtors' Form 22C had not been prepared correctly. In particular, the Form 22C showed debtor Norman Burton's average monthly income for the six months pre-petition as \$4,919, whereas the trustee discovered from Mr. Burton's pay stubs he had actually been paid an average of \$5,512 per month, \$593 per month more than the debtors had chosen to report. The objection was sustained. The debtors' next move was to file an amended Form 22C on which, despite the trustee's discovery that they had understated Mr. Burton's income, the debtors actually reduced his income, to \$4,867. They submitted no explanation of this change. At the same time, they filed the amended plan that is the subject of this motion, in which they proposed to increase their plan payment by \$10 per month; the dividend would remain at 0%.

Not surprisingly, the trustee opposed the motion, noting that the debtors' CMI, as reported on their Form 22C, should have been shown as \$5,512, whereas on the amended Form 22C, they had shown only \$4,867, a difference of \$645. The trustee noted that the debtors had offered no explanation of this reduced figure, and had failed to explain why they did not list the \$5,512 amount disclosed by Mr. Burton's pay stubs. These facts alone are sufficient to allow the court to conclude that the present plan, which increases the plan payment by \$10 while failing to explain an apparent \$645 understatement of income, has not been proposed in good faith.

One week before the original hearing date, the debtors filed a second amended Form 22C on which they finally disclosed Mr. Burton's average monthly income for the applicable six-month period as \$5,512, thus implicitly admitting that their original and first amended Forms 22C were wrong. It appears the first amended form, if not the original one as well, was deliberately prepared incorrectly. In the alternative, the debtors and/or their counsel simply ignored the trustee's objection to their original plan, which the court had sustained.

The debtors have also submitted two different sets of amended Schedules I and J. On the first set, filed after the trustee had objected to their original plan, the debtors showed Mr. Burton's income as \$220 per month higher than originally. At the same time, they increased their food costs by \$100, their transportation costs by \$100, and their clothing costs by \$10, thus offsetting all but \$10 of the newly-disclosed additional income: hence, the proposed \$10 increase in the plan payment. The debtors have not explained why the expenses listed on their original Schedule J, filed just two and one-half months earlier, were wrong. The court finds that the expenses listed on the original Schedule J, filed before the debtors had an incentive to increase their expenses to offset the newly-discovered income, are the correct ones; the amended Schedule J is not a true representation of their expenses, and the court would likely not confirm any plan based on those increased expenses.

Finally, after the original hearing date, the debtors filed second amended Schedules I and J, on which they have finally disclosed Mr. Burton's gross income, including bonuses, as \$5,493, close to the \$5,512 the trustee was looking for when he filed his original objection to confirmation. At the same time, however, they increased by \$175 the amount they spend to help support debtor Pandora Burton's mother, who lives in an assisted living facility (increased from \$100 to \$275), and they added a new \$150 per month expense for miscellaneous emergencies. The result, not surprisingly, is that they have more than offset the income newly reported on their second amended Schedule I. The bottom line is that despite increases in their reported income totaling \$627 (increases that were not actual increases, but simply amounts that should have been included at the outset), the debtors now report their monthly net income at just \$404, almost exactly the same as on the original schedules, \$400.

The court has reviewed the declaration of debtor Norman Burton, filed December 23, 2013, addressing these changes. The court accepts the proposition that the debtors need to contribute to Pandora Burton's mother's basic living expenses, and accepts that the debtors did not include on their original schedule the money they spend to buy in bulk for her when Mr. Burton receives bonuses at work. However, the debtors have not explained the increases on their first amended Schedule J - \$100 for food and \$100 for transportation, and they have not explained why they chose to add, but not until their second amended Schedule J, a \$150 expense for emergencies. The court concludes that those increases and that addition were made for the sole purpose of allowing the debtors to offset the unreported income discovered by the

trustee. Because the present plan payment amount is based on those increased and new expenses, the court concludes the debtors have not met their burden of demonstrating that the plan has been proposed in good faith, and the motion will be denied by minute order.

No appearance is necessary.

17.	13-31224-D-13	ALVARO MONCADA AND CARMEN	OBJECTION TO CLAIM OF JP MORGAN
	JDP-4	MORAGA	CHASE BANK, N.A, CLAIM NUMBER 2
			10-29-13 [39]

Final ruling:

This is the debtors' objection to the claim of JPMorgan Chase Bank (the "Bank"). The court is not prepared to consider the objection at this time because the moving parties failed to serve the Bank at the address on its proof of claim, as required by LBR 3007-1(c). The court will continue the hearing to March 4, 2014, at 10:00 a.m., the moving parties to file a notice of continued hearing no later than January 31, 2014, and to serve it, together with the objection and all other moving papers, on the claimant at the address on its proof of claim no later than January 31, 2014. The notice of continued hearing shall be a notice pursuant to LBR 3007-1(b)(1) or (b)(2), at the moving parties' election, depending on whether the notice is served at least 30 days or at least 44 days prior to the continued hearing date. The moving parties shall file a proof of service no later than February 4, 2014.

The hearing will be continued by minute order. No appearance is necessary on January 7, 2014.

18.	13-31326-D-13	HENRY DIAZ	MOTION FOR RELIEF FROM
	PKB-1		AUTOMATIC STAY
	THE BANK OF NEW YORK MELLON		11-25-13 [25]
	VS.		

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

19.	13-34427-D-13	VICTOR ENRIQUEZ	MOTION TO VALUE COLLATERAL OF
	TOG-1		EVERHOME MORTGAGE
			11-15-13 [9]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Everhome Mortgage at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Everhome Mortgage's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

20. 11-41228-D-13 MELISSA BICE-WALTER
JCK-3

MOTION TO MODIFY PLAN
11-7-13 [40]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

21. 12-28729-D-13 JOAO/GRACIELA FERNANDES
PD-2

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
10-21-13 [42]

Final ruling:

This case was dismissed on December 16, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

22. 13-31529-D-13 TANESIA WILLIAMS-ALLEN
CAH-1

MOTION TO CONFIRM PLAN
11-13-13 [25]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. For the following reasons, the court is inclined to deny the motion.

The debtor filed this case on August 31, 2013, just four months ago. At that time, she proposed a plan calling for plan payments of \$655 per month for 48 months, sufficient to pay her two car loans and a 1% dividend on unsecured claims totaling \$33,830; that is, she proposed to pay a total of \$338 to her unsecured creditors. The trustee objected to confirmation on the grounds that (1) the debtor's Form 22C disclosed that she is an above-median income debtor and the applicable commitment period is five years, whereas she had proposed a plan with a commitment period of only 48 months; and (2) the debtor's Schedule J included a \$250 per month expense for life insurance, whereas the debtor had testified she is no longer paying that expense.

The debtor then proposed this amended plan, in which she has extended the plan term to 60 months. She also filed an amended Schedule J, on November 13, 2013, two and one-half months after filing her original Schedule J. On the amended schedule, she removed the \$250 life insurance premium she is no longer paying. She also testifies she has moved; her amended Schedule J shows her rent as \$705 lower than before. In other words, with these two changes, the debtor would have \$955 per month more than when this case was filed four months ago. The extension of her plan term by 12 months and these changes in her expenses might, absent other changes, have been expected to result in some meaningful dividend to her unsecured creditors.¹

The debtor, however, increased her expenses for electricity, telephone, food, and transportation, and added a child care expense and a personal care expense. In total, she added and increased these expenses by \$1,137, not only completely offsetting the upside of her lower rent and removal of the life insurance payment she is no longer paying, but necessitating a decrease in her plan payment, to \$553. The dividend to unsecured creditors remains the same, 1%.

The debtor explains these increases as follows: "I moved from Manteca to Stockton. Although my rent has decreased, my other expenses have increased due to the cost of gas and having to pay for daycare now." Debtor's declaration, filed Nov. 13, 2013, at 2:9-10. Although the court accepts the debtor's explanation that she has needed to add a child care expense, and understands that her electricity expense may have increased in her new home, her explanation of her increased transportation expense is insufficient, and she has offered no explanation as to why her food expense has increased by \$229 per month or why she has found it necessary, only after the case was filed, to add a \$100 per month personal care expense. Thus, the debtor has failed to overcome the logical inference that the only reason for these increases was to offset the upside her budget reflects as a result of her lower rent and of removing an expense (life insurance) she was not actually paying.

As for the transportation expense, the debtor works in Livermore: the court has determined that her one-way commute from her new home in Stockton is 38.5 miles; from her home in Manteca, it was 35.1 miles. Thus, her commute has increased by 6.8 miles per day (round-trip), which over 22 days, works out to 150 miles per month. Assuming she gets 15 miles per gallon² and pays \$4 per gallon, her increased expense is \$40 per month, whereas she has increased her transportation expense by \$260 per month.³ The court is unable to conclude that this increase or the increased food and personal care expenses are reasonable and necessary.

The court concludes that the debtor has failed to meet her burden to demonstrate that the plan has been proposed in good faith, and the motion will be denied. The court will hear the matter.

1 The extra \$955 per month, after deducting trustee compensation, would have enabled the debtor to pay her creditors 100% in only 40 months.

2 If she drives her 2009 Mitsubishi Eclipse, her gas mileage would be around 25 miles to the gallon highway, and her gas cost would be even less. If she drives her 2003 Chevy Suburban, her mileage would be between 12 and 17 miles to the gallon, depending on the model of the vehicle.

3 The court notes that the debtor has been employed at her job in Livermore for 13 years; thus, she can reasonably be expected to have accurately reported her transportation expense at the commencement of the case.

23. 13-34729-D-13 MARCO REACHI AND IRMA MOTION TO VALUE COLLATERAL OF
TOG-1 SANCHEZ BANK OF AMERICA, N.A.
11-27-13 [10]

24. 11-22033-D-13 BENITO/SARA RUIZ MOTION TO VALUE COLLATERAL OF
JDP-1 JP MORGAN CHASE BANK, N.A.
11-18-13 [84]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

25. 13-33534-D-13 MICHAEL/NANNETTE FARIA OBJECTION TO CONFIRMATION OF
RDG-3 PLAN BY RUSSELL D. GREER
12-9-13 [26]

26. 10-40835-D-13 ROBIN CRUZ MOTION TO MODIFY PLAN
CJY-1 11-14-13 [101]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

27. 13-23735-D-13 TIMOTHY/ROSE FELZIEN MOTION TO CONFIRM PLAN
KRW-2 11-15-13 [101]

28. 13-26235-D-13 LAURO QUITORIANO MOTION TO CONFIRM PLAN
MOT-2 11-25-13 [69]

29. 13-26235-D-13 LAURO QUITORIANO MOTION TO VALUE COLLATERAL OF
MOT-3 CHASE BANK
11-22-13 [65]

Final ruling:

This is the debtor's motion to value collateral of Chase Bank (the "Bank"). The motion will be denied for two reasons.

First, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank as follows: (1) by first-class mail to a street address, with no attention line; and (2) by first-class mail to the attention of an "Officer, a managing or general agent Or agent for service of process." The first method was insufficient because service on an FDIC-insured institution, such as the Bank, must be to the attention of an officer, whereas here, there was no attention line. The second method was insufficient because service on an FDIC-insured institution must be to the attention of an officer and only an officer.

This distinction is important. Fed. R. Bankr. P. 7004(b)(3) requires that service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be to the attention of an officer, managing or general agent, or agent for service of process. See preamble to Fed. R. Bankr. P. 7004(b). If service to the attention of an "Officer, a managing or general agent Or agent for service of process" were sufficient for service on an FDIC-insured institution, the distinction made by Fed. R. Bankr. P. 7004(h), requiring service to the attention of an officer, would be superfluous.

Both methods were insufficient for the additional reason that service on an FDIC-insured institution must be by certified mail, not first-class mail. Again, the distinction is important. If service on an FDIC-insured institution could be made by first-class mail, as with service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the distinction in the manner of service made by the two subdivisions of the rule, Fed. R. Bankr. P. 7004(b) and (h), would be superfluous.

Second, there is no admissible evidence establishing the moving party's factual allegations and demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). First, the debtor's supporting declaration is not signed under oath, as required by 28 U.S.C. § 1746. Second, the debtor states only: "I am informed and thereon allege that based upon current market trends and values of like and similar properties in the area, the current value of the real property in question is \$275,000.00." Debtor's declaration, filed November 22, 2013, at 1:19-20 (emphasis added). The underlined portion of this sentence demonstrates that the debtor's testimony is hearsay. Further, the declaration does not demonstrate that the debtor has any personal knowledge or expert qualifications as to the matters on which he is testifying; that is, current market trends and values of like properties in the area. See Russell, Bankruptcy Evidence Manual § 701.2, p. 743 (West 2010-2011 ed.).

As a result of these service and evidentiary defects, the motion will be denied by minute order. No appearance is necessary.

30. 13-33038-D-13 ALBERT/RITA DE GUZMAN

MOTION TO VALUE COLLATERAL AND
TO AVOID LIEN OF BANK OF
AMERICA
11-14-13 [23]

Final ruling:

This is the debtors' motion to value collateral of Bank of America; namely, a third position deed of trust against real property of the debtors. No opposition has been filed, and except as discussed below, the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America's secured claim at \$0.00 by minute order. No further relief will be afforded.

In particular, the following relief requested in the motion will not be granted. First, the motion inappropriately juxtaposes a motion to value collateral and a motion to avoid a lien. Although it does not refer to § 522(f), it uses the term "avoiding the lien," whereas what the debtors are actually seeking is to value the collateral securing the claim at \$0. The court will not enter an order or judgment avoiding a lien based on an underlying determination of the value of the collateral until such time as the debtors complete their chapter 13 plan and obtain a chapter 13 discharge. Thus, the request that the court "strip and/or avoid the 3rd trust deed lien of Bank of America as an encumbrance on the subject property" will not be granted at this time. The request that the court "find and order the 3rd trust deed holder does not possess a secured claim and the 3rd trust deed has no legal force and effect as an encumbrance on the property, and that neither the 3rd trust deed holder, its successors nor assigns, has any right to foreclose upon the property subject to the 1st and 2nd trust deed [sic]" will also be denied.

Next, as this is not an objection to a claim or a proceeding to determine the amounts of claims, the request that the court "determine and find that the first, second and third liens of [the lienholders] are the sums of \$2,960.00, \$473,175.00 and \$42,729.00 respectively" will be denied. Finally, the debtors request that the court "determine and find that the current market value of the subject property located at [address] is \$281,879.00." The court will determine the value of the property to be \$281,879 for the sole purpose of valuing the claim of Bank of America secured by a third deed of trust for the purpose of plan confirmation, and not for any other purpose, including for the purpose of valuing the claims secured by the first and second deeds of trust.

As a final note, counsel for the moving parties is cautioned, for any future motions, to utilize a docket control number, as required by LBR 9014-1(c).

The motion will be granted by minute order. No appearance is necessary.

31.	13-33038-D-13	ALBERT/RITA DE GUZMAN	OBJECTION TO DEBTORS' CLAIM OF
	RDG-2		EXEMPTIONS
			11-22-13 [31]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The trustee objects on the ground that the debtors' Schedule C is unclear, and the trustee cannot determine the value of the exemptions claimed. For several assets claimed as exempt, the debtors have used more than one code section to claim the same asset as exempt, without identifying the value of the exemption claimed under each code section. The debtors have not filed opposition.

On December 3, 2013, the debtors filed another Schedule C (although it is not labeled as amended). Although the filing of an amended Schedule C ordinarily moots an objection to an earlier claim of exemptions, in this case, the debtors' Schedule C was not filed under cover of an amendment cover sheet, EDC Form 2-015, and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. As a result, the schedule filed December 3, 2013 was not effective to operate as a claim of any exemptions; accordingly, the trustee's objection will be sustained, and the debtors' claim of exemptions filed with their petition will be disallowed.

The objection will be sustained by minute order. No appearance is necessary.

32.	11-24639-D-13	PHILLIP/AIDA MILLER	MOTION TO MODIFY PLAN
	CJY-2		11-21-13 [71]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

33. 13-34542-D-13 WILLIAM/BONNIE WOODWARD
MJH-1

MOTION TO VALUE COLLATERAL OF
CITIMORTGAGE, INC.
11-18-13 [8]

Final ruling:

This is the debtors' motion to value collateral of CitiMortgage, Inc. ("CitiMortgage"). The motion will be denied because the moving parties failed to serve CitiMortgage in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served CitiMortgage by certified mail to the attention of an officer. This was insufficient because service was made by certified mail, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail. This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b)(3), would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

34. 13-34542-D-13 WILLIAM/BONNIE WOODWARD
MJH-2

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL
11-18-13 [12]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

35. 13-34543-D-13 NEAL/MERCEDES MEYERS
MJH-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
11-18-13 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

36. 11-25444-D-13 JOSE/TAMMY MAGALLANES CONTINUED MOTION TO MODIFY PLAN
HWW-3 9-24-13 [60]
37. 11-25444-D-13 JOSE/TAMMY MAGALLANES OBJECTION TO CLAIM OF REAL TIME
HWW-4 RESOLUTIONS, INC., CLAIM NUMBER
3
11-23-13 [70]
38. 13-29144-D-13 FRANCISCO ITURBIDE MOTION TO CONFIRM PLAN
PGM-1 11-6-13 [39]
39. 12-35945-D-13 CLAUDE/KELEEN BRYANT CONTINUED MOTION TO APPROVE
CMB-77 LOAN MODIFICATION
11-1-13 [165]

Final Ruling:

The matter is resolved without oral argument. The court's records indicate that the trustee has withdrawn his opposition and no other timely opposition has been filed and the relief requested in the motion for loan modification of existing mortgage loan on home is supported by the record. As such the court will grant the motion for loan modification of existing mortgage loan on home by minute order. No appearance is necessary.

40. 12-35945-D-13 CLAUDE/KELEEN BRYANT MOTION TO CONFIRM PLAN
GFG-75 10-30-13 [157]

Final ruling:

This is the debtors' motion to confirm an amended plan. On November 21, 2013, the debtors filed a motion to confirm an eighth amended plan. That motion specifically states that "[a]ny previously filed 'Amended' Chapter 13 Plans are hereby rendered moot." As a result of the filing of the eighth amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

41. 12-35945-D-13 CLAUDE/KELEEN BRYANT MOTION TO CONFIRM PLAN
KRW-1 11-21-13 [177]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

42. 11-42046-D-13 FRANK/KITTY RUHSTALLER MOTION TO APPROVE LOAN
CLH-2 MODIFICATION
12-4-13 [54]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

43. 12-36847-D-13 CORDELL PENNIX AND MOTION TO MODIFY PLAN
TBK-5 HORTENSIA WATTS-PENNIX 11-26-13 [56]

44. 13-32850-D-13 FAY/A POLLINO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-22-13 [19]

45. 13-32850-D-13 FAY/A POLLINO
RDG-2

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
11-22-13 [16]

46. 13-30551-D-13 JEFFEREY BURCH AND LISA
TBK-1 VALERIO-BURCH

MOTION TO CONFIRM PLAN
11-4-13 [25]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because there is no proof of service on file; thus, the court cannot determine whether all necessary parties were served and at the correct addresses. The motion will be denied by minute order. Alternatively, if the motion was properly served the court will continue the hearing to allow for the debtors to file a proof of service. The court will hear the matter.

47. 11-41652-D-13 JOHN KILLIAN AND INEZ
JDP-2 PERKINS-KILLIAN

MOTION TO INCUR DEBT
12-6-13 [45]

48. 12-34855-D-13 MARK/STEPHANIE
JCK-1 VILLALPANDO

MOTION TO MODIFY PLAN
11-7-13 [26]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to confirm a modified chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

Under the debtors' confirmed plan, they would make plan payments of \$3,590 per month for 60 months, resulting in a 100% dividend to general unsecured creditors. By way of their modified plan, the debtors would reduce their plan payment to \$3,000 per month and the dividend to 58%. The trustee objects that the modified plan has not been proposed in good faith.

The debtors stated in their supporting declaration that the plan modification is necessary because debtor Stephanie Villalpando was, at the beginning of this case, working temporarily as a delivery supervisor for the U.S. Postal Service, whereas she has since returned to her position as a city letter carrier, with a resulting decrease in income. (The court notes that she described her occupation on the debtors' original Schedule I as a letter carrier.) As the trustee points out, the debtors' amended Schedule I shows they are continuing to contribute \$1,032 per month to their voluntary TSP's, which the trustee contends is not reasonable or necessary in any amount, but especially in light of the proposed decrease in the dividend. In addition, the trustee objects that the debtors continue to make a \$216 per month payment toward a TSP loan that is scheduled to be paid off in December of 2014, whereas the debtors have not proposed to increase their plan payment once that loan has been paid off.

The court agrees with the trustee, and concludes that the debtors have failed to meet their burden of demonstrating that the plan has been proposed in good faith. The trustee notes that the debtors are also continuing to repay two other TSP loans at a total of \$721 per month. In other words, whereas they propose a significant reduction in the dividend to their creditors, they propose to continue contributing to two TSP's and repaying three TSP loans at the same rates as before, and they have not proposed to increase their plan payment even after one of the loans has been paid off.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

49. 12-39155-D-13 THOMAS GARCIA
JCK-1

MOTION TO MODIFY PLAN
11-15-13 [25]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

50. 12-39155-D-13 THOMAS GARCIA
JCK-2

MOTION TO INCUR DEBT
11-15-13 [31]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to incur debt is supported by the record. As such the court will grant the motion to incur debt by minute order. No appearance is necessary.

51. 13-23456-D-13 DANIEL/JEANETTE MONTANO
JCK-1

OBJECTION TO CLAIM OF VALLEY
FIRST CREDIT UNION, CLAIM
NUMBER 20
11-11-13 [29]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim. No appearance is necessary.

52. 13-33057-D-13 CESAR PEREYRA AND BRENDA
PGM-1 MARTINEZ

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
11-21-13 [19]

53. 13-33057-D-13 CESAR PEREYRA AND BRENDA
PGM-2 MARTINEZ

MOTION TO VALUE COLLATERAL OF
GE CAPITAL RETAIL BANK
12-10-13 [33]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

54. 13-26259-D-13 JAGROOP SINGH
MJK-1

MOTION TO AVOID LIEN OF CHASE
BANK USA, N.A.
12-2-13 [120]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

55. 13-26259-D-13 JAGROOP SINGH
MJK-2

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
12-2-13 [115]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

56. 13-26259-D-13 JAGROOP SINGH
MJK-3

MOTION TO AVOID LIEN OF HSBC
BANK NEVADA, N.A.
12-2-13 [125]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by HSBC Bank Nevada, N.A. The court is not prepared to consider the motion at this time because the moving party served HSBC Bank USA, N.A., not HSBC Bank Nevada, N.A. According to the FDIC's website, the two banks are different entities.

The debtor's earlier motion to avoid this lien was denied because of several service, notice, and evidentiary defects. With this new motion, the moving party has corrected most of them. However, in its ruling on the earlier motion, the court cautioned counsel about this additional basis on which the motion would be denied; namely, that the moving party had served HSBC Bank USA, N.A., which the FDIC's website indicates is a different institution from HSBC Bank Nevada, N.A. With this new motion, counsel overlooked that caution and served HSBC Bank USA, N.A. at the same addresses as the prior motion, and did not serve HSBC Bank Nevada, N.A., at all. The court notes that according to the FDIC's website, HSBC Bank Nevada, N.A. was closed in July of 2013, and is no longer in operation. This does not mean, however, that a party moving for relief against that entity may accomplish effective service simply by serving a different entity entirely, although it has a similar name, at least not without providing some evidence that the lien that is the subject of the motion is now held by that different entity. This the moving party has not done.

The court will continue the hearing to February 4, 2014, at 10:00 a.m., the moving party to file a notice of continued hearing no later than January 21, 2014, and to serve it, together with the motion and all other moving papers, on HSBC Bank Nevada, N.A. or such other entity as the moving party demonstrates by way of admissible evidence is the present holder of the lien in question, no later than January 21, 2014. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(1) or (f)(2), at the moving party's election, depending on whether the notice of continued hearing and other moving papers are served at least 14 days or at least 28 days prior to the continued hearing date. The moving party shall file a proof of service within three days after the date service is made.

The hearing will be continued by minute order. No appearance is necessary on January 7, 2014.

57. 13-26259-D-13 JAGROOP SINGH
MJK-4

MOTION TO CONFIRM PLAN
12-2-13 [109]

Final ruling:

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied because the moving party gave only 36 days' notice of the hearing, rather than 42 days', as required by LBR 3015-1(d)(1) and applicable rules. As a result of this notice defect, the motion will be denied, and the court need not consider the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

58. 13-33659-D-13 DULCE MANCINAS
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-9-13 [21]

Final ruling:

This case was dismissed on December 18, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

59. 13-30960-D-13 MANUEL/LILIA ANDRADE
DN-1

CONTINUED MOTION TO VALUE
COLLATERAL OF REAL TIME
RESOLUTIONS, INC.
10-1-13 [14]

Tentative ruling:

This is the debtors' motion to value collateral of Real Time Resolutions ("Real Time"); namely, a second position deed of trust against the debtors' residence, at \$0. Real Time filed opposition to the motion, and the hearing was continued to allow Real Time to submit evidence, which it has done. For the following reasons, the motion will be denied.

There is a deed of trust on the property that is senior to Real Time's deed of trust - the senior lien secures a claim in the amount of \$206,900. Thus, if the value of the property is more than \$206,900, the debtors may not value Real Time's claim under § 506(a) of the Bankruptcy Code. The debtors' evidence as to the value of the property is the declaration of debtor Manuel Andrade, in which he testifies that when the debtors filed this case (on August 20, 2013), the property had a value of \$190,000. Real Time has filed a declaration of Richard West, who, according to

the list of his qualifications filed as an exhibit, has been a real estate appraiser since 1989. Mr. West has appraised the property, based on both exterior and interior inspections, and has concluded that the fair market value of the property as of October 1, 2013 was \$290,000. Real Time has filed a copy of Mr. West's appraisal report along with his declaration.

A homeowner may testify to his or her opinion of the value of his or her property. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). However, as against the testimony of an individual with professional experience in the real estate industry, the court gives greater weight to the opinion of the professional. Thus, in this case, the court accords greater weight to Mr. West's opinion than to the debtor's, and concludes that the fair market value of the property is \$290,000. As such, there is equity in the property over and above the amount due on the senior lien, and the motion will be denied.

The court will hear the matter.

60.	13-30960-D-13	MANUEL/LILIA ANDRADE	CONTINUED MOTION TO CONFIRM
	DN-3		PLAN
			10-30-13 [32]

61.	13-26162-D-13	ERIC/RAQUEL ALMASON	MOTION TO CONFIRM PLAN
	ALF-2		11-1-13 [55]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

62.	13-26962-D-13	SALVADOR MOYA AND ROSALBA	MOTION TO CONFIRM PLAN
	SBS-5	HUERTA	11-1-13 [105]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

63. 13-27064-D-13 MILDRED GARCIA MOTION TO CONFIRM PLAN
SJS-3 11-18-13 [62]

Final ruling:

This case was dismissed on December 18, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

64. 13-29365-D-13 RODNEY LOFLIN AND LINDA MOTION TO MODIFY PLAN
DN-1 DANA-LOFLIN 11-18-13 [23]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

65. 12-36066-D-13 MATTHEW/ANDREA MOTION TO MODIFY PLAN
JAD-3 SCHWERTFEGER 11-6-13 [53]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

66. 13-24367-D-13 JOHN/NADINE ABREU MOTION TO VALUE COLLATERAL OF
RAC-1 CITIBANK, N.A.
11-18-13 [32]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Citibank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

67. 13-29367-D-13 WILLIAM/JENI FLORES
JCK-4

MOTION TO CONFIRM PLAN
11-15-13 [57]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

68. 13-31768-D-13 MARIBEL/RAMON AGUILAR
ALB-2

MOTION TO CONFIRM PLAN
11-18-13 [40]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve at least 10 of the creditors listed on their Schedule F, as required by Fed. R. Bankr. P. 2002(b); ¹ (2) the notice of hearing does not include the cautionary language required by LBR 9014-1(d)(3) or any similar language; and (3) the moving parties failed to serve the U.S. Dept. of Education at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

¹ The debtors filed their Schedule F two weeks after their petition was filed; on their Schedule F, they included at least 10 creditors who had not been listed on their master address list. The debtors did not amend their master address list when they filed their schedules. Thus, there are at least 10 creditors who were not served with this motion and who have never been given notice of this case (at least so far as the record reveals).

69. 09-31069-D-13 ROSARIO ESPINOZA
CJY-1

MOTION TO MODIFY PLAN
11-25-13 [109]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

70. 13-34572-D-13 JOHN/KARRIE HEILBRUN
LRR-1

MOTION TO VALUE COLLATERAL OF
KEYBANK
11-18-13 [8]

Final ruling:

This is the debtors' motion to value collateral of KeyBank (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank to the attention of its president by first-class mail, whereas service on an FDIC-insured institution, such as the Bank, must be by certified mail. This distinction is important. Service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail (see Fed. R. Bankr. P. 7004(b)(3) and preamble to Fed. R. Bankr. P. 7004(b)), whereas service on an FDIC-insured institution must be by certified mail. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution by first-class mail were sufficient, the distinction in the manner of service made by the two subdivisions of the rule would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

71. 13-31873-D-13 DANNY/LUISA ACAIN
GMY-1

MOTION TO CONFIRM PLAN
11-15-13 [22]

Final ruling:

This case was dismissed on December 18, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

72. 13-22675-D-13 DARLENE GLADNEY
JCK-1

MOTION TO MODIFY PLAN
11-26-13 [31]

73. 13-27075-D-13 VICTOR/RENEE PADILLA
DEF-6

MOTION TO CONFIRM PLAN
11-19-13 [85]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

The debtors' original plan filed in this case called for plan payments of \$2,785 per month for 60 months, with a dividend of 100% on unsecured claims

estimated at only \$2,387. The trustee objected to that plan on the ground that the debtors' Schedule I showed the gross income of each debtor as \$3,750 per month, whereas their pay stubs showed an average of \$4,901 per month for Mr. Padilla and \$4,855 for Mrs. Padilla. The debtors' motion to confirm that plan was denied for another reason, and the court did not reach the issue raised by the trustee.

The debtors then filed an amended plan calling for the same plan payments (\$2,785 x 60), but providing for a 0% dividend on unsecured claims estimated at \$156,513. The trustee opposed that plan on the ground that the debtors' supporting declaration stated that their average income (after taxes) is \$5,459 for Mr. Padilla and \$5,269 for Mrs. Padilla, for a total of \$10,728, as against living expenses of \$2,867, leaving monthly net income of \$7,860, whereas the debtors were proposing to make a plan payment of only \$2,785, with a 0% dividend. The motion was denied.

The debtors have now proposed exactly the same plan, albeit with a different title (second amended). The debtors have not addressed the trustee's concern that they propose to pay only \$2,785 per month into the plan, whereas their monthly net income is \$7,860. Thus, the trustee has opposed this motion on the same ground. Because the debtors have proposed a plan identical to one of which the court previously denied confirmation, without addressing the issue raised by the trustee that led to that denial, the court concludes that the plan that is the subject of this motion has not been proposed in good faith, and the motion will be denied by minute order.

No appearance is necessary.

74. 13-34875-D-13 MARY HARRINGTON
SBS-1

MOTION TO VALUE COLLATERAL OF
SAN FRANCISCO FIRE CREDIT UNION
11-22-13 [7]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of San Francisco Fire Credit Union at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of San Francisco Fire Credit Union's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

75. 13-33876-D-13 SHAWN CRARY
LRR-1

MOTION TO VALUE COLLATERAL OF
SUNTRUST MORTGAGE, INC.
11-5-13 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Suntrust Mortgage, Inc. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Suntrust Mortgage, Inc.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

76. 12-33779-D-13 JAVIER NAVARRO MOTION TO APPROVE LOAN
TBK-4 MODIFICATION
12-10-13 [72]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

77. 09-40480-D-13 CHRISTIAN/LINDA BOSS MOTION TO MODIFY PLAN
DN-6 11-13-13 [78]

Final ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The motion will be denied because the moving parties failed to serve the present holder of Claim No. 5 (a secured claim for \$24,107), as evidenced by its Transfer of Claim Other Than for Security, filed September 4, 2013 (docketed as Claim No. 13 on the court's claims register). As a result of this service defect, the motion will be denied, and the court need not consider the issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

78. 13-30380-D-7 MICHAEL HANNA MOTION TO CONFIRM PLAN
DN-2 11-18-13 [50]

Final ruling:

This case was converted to a case under Chapter 7 on December 18, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

79. 09-32081-D-13 KIMBALL/DANIELLE WADE MOTION TO INCUR DEBT
CFH-3 12-10-13 [58]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to incur debt is supported by the record. As such the court will grant the motion to incur debt by minute order. No appearance is necessary.

80. 12-25482-D-13 HENRY/ORA HILL
MLA-5

MOTION TO MODIFY PLAN
11-24-13 [76]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

81. 12-35682-D-13 CHARLES/TAMMY CARSTERSEN
CLH-2

MOTION TO CONFIRM PLAN
11-21-13 [127]

82. 13-33883-D-13 GUADELUPE PADILLA
EAT-1
FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-4-13 [21]

Final ruling:

This case was dismissed on December 18, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

83. 13-27384-D-13 JOSEPHINE ARENAS-FIERRO
RCP-4

MOTION TO CONFIRM PLAN
11-22-13 [55]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve several creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving party failed to serve Gilbert G. Fierro, listed on her Schedule H, at all, as required by Fed. R. Bankr. P. 2002(b); and (3) the moving party failed to serve Crest Financial, listed on her Schedule D, at all, as required by the same rule. (As to Gilbert G. Fierro, the rules require that he be listed on the debtor's master address list filed in the case, see Fed. R. Bankr. P. 1007(a)(1) (he was not), and by virtue of the extremely broad definition of "creditor," see 11 U.S.C. § 101(5) and (10), Fierro is a creditor and required by Fed. R. Bankr. P. 2002(b) to be given notice. As to Crest Financial, the debtor refers in this motion to that creditor as having a "paid off debt." However, that creditor was listed on the debtor's Schedule D at the outset of this case, and should also have received notice.)

As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

84. 13-33384-D-13 JANICE WALTON-BOWEN
JHW-1

OBJECTION TO CONFIRMATION OF
PLAN BY MERCEDES BENZ FINANCIAL
SERVICES USA, LLC
12-3-13 [18]

85. 08-34385-D-13 ELOY/PAULA BACA
JDP-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
11-14-13 [66]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

86. 11-46785-D-13 DEWAYNE/MILDRED WEDDLES
JCK-5

MOTION TO MODIFY PLAN
12-6-13 [89]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

87. 13-29186-D-13 MICHAEL/TERESA CHOJNACKI
JM-4

MOTION TO CONFIRM PLAN
11-7-13 [49]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

88. 13-33286-D-13 ADAM/RACHEL MADRID
RAC-1

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
11-13-13 [15]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JPMorgan Chase Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JPMorgan Chase Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

89. 13-33386-D-13 WILMER/IRVINE JOHNSON
JCK-1

MOTION TO VALUE COLLATERAL OF
UNITED CONSUMER FINANCIAL
SERVICES/KIRBY
11-15-13 [19]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

90. 13-33386-D-13 WILMER/IRVINE JOHNSON
JCK-2

MOTION TO VALUE COLLATERAL OF
NATIONAL CREDIT ADJUSTERS
11-15-13 [14]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

91. 13-33386-D-13 WILMER/IRVINE JOHNSON
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
12-9-13 [25]

92. 13-33386-D-13 WILMER/IRVINE JOHNSON OBJECTION TO CONFIRMATION OF
SAS-1 PLAN BY FINANCE AND THRIFT
COMPANY
12-11-13 [28]

93. 13-34186-D-13 JEREMY/KAREE HARRISON MOTION TO VALUE COLLATERAL OF
SJS-1 CIG FINANCIAL, LLC
11-22-13 [13]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

94. 12-36388-D-13 AUDREY PLETAN MOTION TO AVOID LIEN OF HPROF,
PGM-3 LLC
11-15-13 [48]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

95. 10-51090-D-13 MIGUEL/MARISOL OROZCO OBJECTION TO DEBTORS' CLAIM OF
RDG-5 EXEMPTIONS
11-22-13 [110]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemption of \$88,123 the debtors received in settlement of their claims against Chase Home Finance ("Chase"). The debtors have filed opposition. For the following reasons, the objection will be overruled.

The debtors have claimed the funds as exempt under Cal. Code Civ. Proc. § 703.140(b)(11)(E), which permits the exemption of payments in compensation of loss of future earnings, but only to the extent reasonably necessary for the support of the debtors or their dependents. The trustee objected on the grounds that the debtors had provided no evidence the funds represent compensation for loss of future earnings or that the funds are reasonably necessary for the support of the debtors

or their dependents. The trustee noted that the debtors have not had these funds during the three years this case has been pending, yet they have been able to make all their plan payments.

In response, the debtors have submitted the declaration of debtor Marisol Orozco, who testifies that the alleged wrongful foreclosure that was the basis of their action against Chase resulted in her losing the child care business she had been operating in their home. She opened the business in 2005, soon after the debtors purchased the home, and operated it until Chase foreclosed, in May of 2010. She states that for several reasons, the home was particularly suitable to the child care business, that her license authorized her to operate the business only in that particular home, and that she had advertised in the particular area and built up a favorable reputation for the business in that area. She adds that she attended many certification courses and trainings conducted by the Department of Social Services, and that she had a background check and became CPR certified in order to operate the business. She supports these allegations with a number of exhibits. She claims that by the time Chase foreclosed, she had developed a steady client base, her business was flourishing, she had a wait list, and she was planning to hire more employees in order to expand the business. Mrs. Orozco is 54 years old, speaks English as a second language, and has only a high school education. She had planned to run the business until she is 65, when she would retire. Instead, the foreclosure resulted in the loss of her future earnings from the business; she has been unable to find another job because of her limited English, her age, her lack of education and transferrable skills, and her limited work experience. She has been unable to open another child care business because she and her husband do not have a suitable home.

The debtors have submitted copies of their tax returns for 2008 through 2012, which show Mrs. Orozco had gross receipts from her business of \$69,983 in 2008, \$58,650 in 2009, and \$27,571 in 2010, and net income of \$12,046 in 2008, \$16,141 in 2009, and \$7,798 in 2010. She had no income in 2011 or 2012. Mr. Orozco is 57 years old, has long suffered from arthritis, and testifies he does not expect to be able to continue working as a mechanic for much longer. Based on this evidence, together with the debtors' schedules filed in this case, and especially considering the debtors' ages, Mr. Orozco's health issues, and Mrs. Orozco's limited employment prospects, the court has no trouble concluding that the entire amount of the settlement proceeds will be reasonably necessary for their support in retirement. At the commencement of this case, three years ago, Mr. Orozco had a pension valued at only \$13,000; Mrs. Orozco had no retirement funds.

The court now returns to the initial question - whether the funds represent compensation for loss of future earnings. From the debtors' schedules in an earlier case, Case No. 10-36959, filed at a time when the debtors were still contending they owned the residence, it is clear the debtors had no equity in the property; thus, it does not appear any portion of the settlement proceeds was attributable to a loss of equity. The debtors' daughter suffered emotionally after the foreclosure; however, it appears her problems derived more from the loss of income, from which the debtors had planned to send her to a private school and to pay for certain extracurricular activities, than from the foreclosure and loss of the home itself. In other words, the debtors have sufficiently demonstrated that all the settlement funds were paid on account of the loss of Mrs. Orozco's future earnings. The debtors have submitted a declaration of IRS enrolled agent Hansson Ling, from which the court concludes that the total settlement amount, \$88,123, is far less than the amount Mrs. Orozco would have earned from her business over the next 10 years.

Finally, § 703.140(b)(11)(E) does not specifically refer to the payment sought to be exempted as being reasonably necessary for the debtor's support in retirement, as opposed to his or her present support. However, the section covers payments in compensation for loss of future earnings; just as an IRA is a substitute for future earnings. See In re Rawlinson, 209 B.R. 501, 503 (9th Cir. BAP 1997), citing with approval In re Carmichael, 100 F.3d 375, 378 (5th Cir. 1996). The court concludes that, regardless of whether the settlement funds are necessary for the debtors' support at the present time, what matters for application of the statute is that it will clearly be reasonably necessary for their support when they retire.

For the reasons stated, the objection will be overruled. The court will hear the matter.

96. 13-29990-D-13 JOSE/JOSEFINA VAZQUEZ MOTION TO CONFIRM PLAN
TOG-2 11-4-13 [37]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

97. 13-21792-D-13 TERRY/JACQUELINE THOMAS MOTION TO MODIFY PLAN
CJY-2 11-25-13 [42]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

98. 13-33597-D-13 GERARDO ZUNIGA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
12-9-13 [21]

Final ruling:

This case was dismissed on December 18, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

99.	12-30717-D-13 DN-3	ROBERT/KELLY STEWART	MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT 12-24-13 [47]
100.	08-37618-D-13 CJY-1	RONALD/BOBBI KISTLER	MOTION TO INCUR DEBT 12-23-13 [57]
101.	13-33755-D-13 RDG-1	PEGGI/DOMINIC MACHADO	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 12-18-13 [21]
102.	13-33756-D-13 RDG-2	JULIE WALLNER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 12-18-13 [24]

103. 13-35557-D-13 TAJADA WELDON
RLF-1

MOTION TO EXTEND AUTOMATIC STAY
12-24-13 [12]

104. 13-21663-D-13 DAMIAN/YOLANDA MAGANA
DMR-1

MOTION TO INCUR DEBT
12-20-13 [28]

105. 11-37574-D-13 SANTIAGO VALENCIA GALVEZ
AND MARIA VALENCIA

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-6-13 [29]

Tentative ruling:

This is the debtors' objection to the trustee's Notice of Default and Intent to Dismiss Case. The objection was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has an initial concern about service of the objection. The debtors allege their mortgage lender, GMAC Mortgage, has improperly notified the trustee of a change in the mortgage payment that conflicts with the payment amount set forth in a pre-petition loan modification agreement between the debtors and GMAC Mortgage. The court's concern is that the debtors served their objection only on GMAC Mortgage, at the address on its original proof of claim, and did not serve the attorneys who have filed two Notices of Mortgage Payment Change pertaining to the mortgage payment in question, and did not serve 21st Mortgage Corporation, who claims to be the assignee of the claim as of November 8, 2013. (See DN 30.)

For this reason, the court intends to continue the hearing to allow the debtors to serve the attorneys who filed the Notices of Mortgage Payment Claim, and to serve 21st Mortgage Corporation. The court will hear the matter.

106. 12-35682-D-13 CHARLES/TAMMY CARSTERSEN
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-13-13 [133]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. The matter was set for this calendar because the notice of hearing gives the hearing date as January 7, 2014. However, the objection itself gives the hearing date as January 21, 2014. As the objection and notice were served on December 13, 2013, a hearing on January 7, 2014 would mean the debtors had only 25 days' notice, rather than 42 days', as required for the notice, which purported to require written opposition 14 days prior to the hearing date.

Because that notice would be insufficient, the matter will be continued to January 21, 2014, at 10:00 a.m., which appears to have been the trustee's intention. The hearing will be continued by minute order. No appearance is necessary on January 7, 2014.